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(4)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,081	06/21/2001	Kevin Wade Jameson		3822
29684	7590	08/24/2004	EXAMINER	
KEVIN JAMESON			LU, KUEN S	
148 EDGE BANK PLACE NW			ART UNIT	PAPER NUMBER
CALGARY, AB T3A 4L4				
CANADA			2177	

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

(4)

PDX

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/885,081	JAMESON, KEVIN WADE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kuen S Lu	2177	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 June 2001.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-40 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>#2-06/21/2001</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Double Patenting***

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claim 1 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of U.S. Patent 6,768,989.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent 6,768,989. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 1 of instant invention substantially recites the limitation of claim 1 of 6,768,989.

The distinction between the two claims is that the definition entry of the 6,768,989 includes "receiving a request for information about detected collections" and the instant invention includes "obtaining a list of collections for processing". It would have been obvious to one of ordinary skill in the art of data structure comprising collection specifier

and collection content to obtain a list of collections through receiving a request of detected collection.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 21-40 are rejected under 35 U.S.C. 102(b) as anticipated by Gould et al. (U.S. Patent 6,460,036, hereafter "Gould").

As per claims 21, 28 and 35 Gould teaches the following:

"obtaining a list of collections for processing, wherein ..., thereby ... command applicator problem" (See Fig. 13, steps 572-574 and col. 22, lines 10-26 and 37-57 wherein Gould's **collection of nodes and collection of context, selecting a first node and determining context list based upon first node** is equivalent to Applicant's collection and obtaining a list of collections for processing); and  
"applying one or more computer commands to collections within said list of collections, wherein ..., thereby ..." (See Fig. 14, step 574 and col. 22, lines 37-67 and col. 23, lines 1-7 and 16-24 wherein Gould's **querying for context based on the first node** is equivalent to Applicant's applying one or more computer commands to collections within said list of collections).

As per claims 22, 29 and 36 Gould teaches the following:

"sorting said list of collections into a visit order before applying computer commands to collections within said list of collections, thereby ensuring that commands are applied in proper visit order according to processing interdependencies that may exist among processed collections, and thereby providing a solution to the collection visit order problem" (See col. 18, lines 12-21 wherein Gould's **context list is ordered when traversing and displaying the nodes in the hyper-graphs** is equivalent to Applicant's list of collection is sorted before applying the computer commands to collections within the list).

As per claims 23, 30 and 37 Gould teaches the following:

"sorting said list of collections uses information selected from a group consisting of collection specifier information and collection type definition information and collection content information, thereby ..., thereby ..." (See col. 18, lines 22-30 wherein Gould's **a computer program selecting a first context list of the context lists, selecting a first context of the first context list and displaying the node of the first context of the first context list graphs** is equivalent to Applicant's sorting said list of collections uses information selected from a group consisting of collection specifier information and collection type definition information and collection content information).

As per claims 24, 31 and 38, Gould teaches the following:

"obtaining a list of collections uses a collection recognizer means to identify collections for processing, thereby providing a precise and scalable way to identify interesting collections for automated processing" (See Fig. 10 and col. 13, lines 31-38 wherein Gould's **file manager users interfaces to identify contents and items in the node as**

**separate nodes** is equivalent to Applicant's obtaining a list of collections uses a collection recognizer means to identify collections for processing).

As per claims 25 and 32, Gould teaches the following:

"applying one or more computer commands uses a command execute parallel means to apply commands, thereby using parallel processing techniques to apply commands to collections in a minimum amount of time, and thereby providing a solution to the parallel collection command execution problem" (See col. 34, lines 36-46 wherein Gould's **performing concurrent operations to more than one context in parallel** is equivalent to Applicant's applying one or more computer commands uses a command execute parallel means to apply commands).

As per claims 26, 33 and 39, Gould teaches the following:

"applying one or more computer commands uses an indirect command execution means selected from a group consisting of command execution sequential indirect means and command execution parallel indirect means, thereby creating an efficient, reusable, and persistent way of applying arbitrary commands to a set of collections without incurring collection list production costs for each future command application to the same set of collections" (See col. 30, lines 23-32 and col. 34, lines 36-46 wherein Gould's **performing concurrent operations sequentially and concurrently in a sequential manner upon the preloaded context** is equivalent to Applicant's applying one or more computer commands uses an indirect command execution means selected from a group consisting of command execution sequential indirect means and command execution parallel indirect means).

As per claims 27, 34 and 40, Gould teaches the following:

"applying one or more computer commands uses nearby execution directory techniques to calculate ultimate command execution directories, thereby enabling said computer commands to be conveniently applied within nearby execution directories without requiring extra effort from human knowledge workers, and thereby providing a solution to the nemby execution directory problem" (See Fig. 38, step 2322 and Figs. 41, 39 and 42, and col. 47, lines 17-62 wherein Gould's concurrent operation steps 2322 initiating steps 2406 and 2456, respectively, where the steps further use nearby steps 2406 and 2460 as the calculated ultimate command execution directory paths of applying the computer commands is equivalent Applicant's applying one or more computer commands uses nearby execution directory techniques to calculate ultimate command execution directories).

## 6. ***Conclusions***

The prior art made of record

A. U.S. Patent 6,505,209

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

B. U.S. Patent 5,953,720

C. U.S. Patent No. 6,493,711

D. U.S. Patent No. 6,601,067

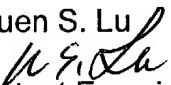
E. U.S. Pub. No. 6,460,036

F. U.S. Pub. No. 6,768,989

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kuen S Lu whose telephone number is 703-305-4894. The examiner can normally be reached on 8 AM to 5 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on 703-305-9790. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Kuen S. Lu  
  
Patent Examiner

August 19, 2004



Alford Kindred  
Primary Examiner

August 19, 2004